

1 Richard M. Heimann (063607)
rheimann@lchb.com
2 Katherine C. Lubin (259826)
kbenson@lchb.com
3 Michael K. Sheen (288284)
msheen@lchb.com
4 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
5 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
6 Facsimile: (415) 956-1008

7 Attorneys for Co-Lead Plaintiff Fire & Police Pension Association of Colorado and Co-Lead Counsel

8 Maya Saxena (*Pro hac vice*)
msaxena@saxenawhite.com
9 Joseph E. White, III (*Pro hac vice*)
jwhite@saxenawhite.com
10 Lester R. Hooker (241590)
lhooker@saxenawhite.com
11 SAXENA WHITE P.A.
12 150 East Palmetto Park Road, Suite 600
13 Boca Raton, FL 33432
Telephone: (561) 394-3399
Facsimile: (561) 394-3382

14 Attorneys for Co-Lead Plaintiff The City of Birmingham
15 Retirement and Relief System and Co-Lead Counsel

16 [Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Lead Case No. 3:16-cv-05541-JST

**CO-LEAD PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT, AND MEMORANDUM
OF POINTS OF AUTHORITIES IN
SUPPORT THEREOF**

24 This Document Relates to:

25 | ALL ACTIONS.

Date: April 4, 2019

Date: April 4, 2014
Time: 2:00 PM

Time: 2:00 P.M.
The Honorable Jon S. Tigar
Courtroom 9, 19th Floor

TABLE OF CONTENTS

2	MEMORANDUM OF POINTS AND AUTHORITIES	1
3	I. INTRODUCTION	1
4	II. BACKGROUND AND PROCEDURAL HISTORY	2
5	A. Factual Background.....	2
6	B. Procedural Background	4
7	1. The Operative Complaint and Motions to Dismiss.....	4
8	2. Co-Lead Plaintiffs Stayed and Coordinated Related Derivative Actions ..	5
9	3. Discovery From Wells Fargo, Individual Defendants, and Non-Parties	9
10	4. Mediation and Settlement	10
11	III. SETTLEMENT TERMS.....	10
12	IV. LEGAL STANDARD	11
13	V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.....	13
14	A. Co-Lead Plaintiffs Vigorously Pursued This Litigation.....	13
15	B. The Settlement Results From Good-Faith, Arm's-Length Negotiations.....	15
16	C. The Settlement Confers Substantial Benefits to the Company	16
17	D. The Strength of Co-Lead Plaintiffs' Claims	17
18	E. Risk, Expenses, and Delay Associated with Continued Litigation	18
19	F. Co-Lead Plaintiffs' and Co-Lead Counsel's Endorsement of the Settlement	20
20	VI. THE NOTICE PLAN PROVIDES MORE THAN ADEQUATE NOTICE	21
21	VII. ATTORNEY'S FEES, COSTS, AND REPRESENTATIVE REIMBURSEMENT	22
22	A. Attorney's Fees and Costs	22
23	B. Representative Reimbursement	23
24	VIII. PROPOSED SCHEDULE FOR DISSEMINATION OF NOTICE AND	
25	SCHEDULE OF FINAL APPROVAL HEARING.....	24
26	IX. CONCLUSION	25

TABLE OF AUTHORITIES

Cases

<i>Angell v. City of Oakland</i> , No. 13-CV-00190 NC, 2015 WL 65501 (N.D. Cal. Jan. 5, 2015)	21
<i>Chavez v. PVH Corp.</i> , No. 13-CV-01797-LHK, 2015 WL 9258144 (N.D. Cal. Dec. 18, 2015)	21
<i>Churchill Vill., L.L.C. v. Gen. Elec.</i> , 361 F.3d 566 (9th Cir. 2004).....	13
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992).....	21
<i>Harris v. Vector Mktg. Corp.</i> , No. C-08-5198 EMC, 2011 WL 1627973 (N.D. Cal. Apr. 29, 2011)	13
<i>HCL Partners Ltd. P'ship v. Leap Wireless Int'l, Inc.</i> , Nos. 07 CV 2245 MMA, 08-CV-0128 MMA, 2010 WL 4027632 (S.D. Cal. Oct. 14, 2010). 16	
<i>Hefler v. Wells Fargo & Co.</i> , No. 3:16-cv-05479-JST, 2018 WL 4207245 (N.D. Cal. Sept. 4, 2018)	15, 16, 23
<i>Hefler v. Wells Fargo & Co.</i> , No. 3:16-cv-05479-JST, 2018 WL 6619983 (N.D. Cal. Dec. 18, 2018)	23
<i>Hesse v. Sprint Corp.</i> , 598 F.3d 581 (9th Cir. 2010).....	21
<i>In re Activision Blizzard, Inc. Stockholder Litig.</i> , 124 A.3d 1025 (Del. Ch. 2015).....	17
<i>In re Atmel Corp. Deriv. Litig.</i> , No. 06-cv-04592-JF, 2010 WL 9525643 (N.D. Cal. Mar. 31, 2010)	22
<i>In re Bank of Am. Corp. Sec., Derivative & ERISA Litig.</i> , No. 1:09-md-02058-PKC (S.D.N.Y. Jan. 18, 2013).....	17, 20
<i>In re Broadcom Corp. Derivative Litig.</i> , No. 2:06-cv-03252-R-CW (C.D. Cal. Aug. 28, 2009).....	17, 20
<i>In re Caremark Int'l Inc. Derivative Litig.</i> , 698 A.2d 959 (Del. Ch. 1996).....	2, 19
<i>In re Cendant Corp. Derivative Action Litig.</i> , 232 F. Supp. 2d 327 (D.N.J. 2002)	23
<i>In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, and Prods. Liab. Litig.</i> , 2019 WL 536661 (N.D. Cal. Feb. 11, 2019)	12
<i>In re Duke Energy Corp. Coal Ash Derivative Litig.</i> , C.A. No. 9682-VCG (Del. Ch. filed May 22, 2014).....	20
<i>In re Galena Biopharma, Inc. Deriv. Litig.</i> , No. 3:14-CV-00382-SI, 2016 WL 10840600 (D. Or. June 24, 2016)	20
<i>In re Hewlett-Packard Co. S'holder Derivative Litig.</i> , 716 F. App'x 603 (9th Cir. 2017)	12, 21
<i>In re HQ Sustainable Mar. Indus., Inc., Derivative Litig.</i> , No. C11-0910 RSL, 2013 WL 3191867 (W.D. Wash. June 20, 2013)	13
<i>In re Mego Fin. Corp. Sec. Litig.</i> , 213 F.3d 454 (9th Cir. 2000).....	13

1	<i>In re MRV Commc'ns, Inc. Derivative Litig.,</i> No. CV 08-03800 GAF (MANx), 2013 WL 12210256 (C.D. Cal. Apr. 8, 2013).....	13
2	<i>In re News Corp. S'holder Derivative Litig.,</i> C.A. No. 6285-VCN, 2013 WL 1914773 (Del. Ch. May 3, 2013).....	17
3	<i>In re NVIDIA Corp. Derivative Litig.,</i> No. C-06-06110-SBA (JCS), 2008 WL 5382544 (N.D. Cal. Dec. 22, 2008).....	passim
4	<i>In re Oclaro, Inc. Derivative Litig.,</i> No. C-11-3176 EMC, 2014 WL 4684993 (N.D. Cal. Sept. 19, 2014)	13
5	<i>In re Pac. Enters. Sec. Litig.,</i> 47 F.3d 373 (9th Cir. 1995).....	12, 19
6	<i>In re Pfizer Inc. S'holder Derivative Litig.,</i> No. 1:09-cv-07822-JSR (S.D.N.Y. Dec. 14, 2010)	17
7	<i>In re Rambus Inc. Derivative Litig.,</i> No. 06-cv-03513-JF, 2009 WL 166689 (N.D. Cal. Jan. 20, 2009).....	22
8	<i>In re the Hospitalist Co., Inc. Consolidated Derivative Litig.,</i> C.A. No. 10258-CB (Del. Ch. filed Oct. 20, 2014)	20
9	<i>In re UnitedHealth Grp. Inc. S'holder Derivative Litig.,</i> No. 0:06-cv-01216-JMR-FLN (D. Minn. filed Mar. 29, 2006).....	20
10	<i>In re Volkswagen "Clean Diesel" Mkt'g, Sales Practices & Prods. Liability Litig.,</i> No. 3:15-md-02672-CRB (N.D. Cal.).....	20
11	<i>In re Wilmington Tr. Sec. Litig.,</i> Master File No. 10-cv-00990-ER (D. Del.)	20
12	<i>Lloyd v. Gupta,</i> No. 15-cv-04183-MEJ, 2016 WL 3951652 (N.D. Cal. July 22, 2016).....	12
13	<i>Maher v. Zapata Corp.,</i> 714 F.2d 436 (5th Cir. 1983).....	19
14	<i>Rodriguez v. W. Publ'g Co.,</i> 563 F.3d 948 (9th Cir. 2009).....	23
15	<i>Rosenbloom v. Pyott,</i> 765 F.3d 1137 (9th Cir. 2014).....	19
16	<i>Schimmel v. Goldman,</i> 57 F.R.D. 481 (S.D.N.Y. 1973)	19
17	<i>Six (6) Mexican Workers v. Ariz. Citrus Growers,</i> 904 F.2d 1301 (9th Cir. 1990).....	23
18	<i>Stone v. Ritter,</i> 911 A.2d 362 (Del. 2006)	19
19	<i>Thomas v. MagnaChip Semiconductor Corp.,</i> No. 14-CV-01160-JST, 2018 WL 2234598 (N.D. Cal. May 15, 2018)	24
20	<i>Vizcaino v. Microsoft Corp.,</i> 290 F.3d 1043 (9th Cir. 2002).....	23
21	Statutes	
22	California Corporations Code, Section 25402	5
23	California Corporations Code, Section 25403	5
24	Securities Exchange Act of 1934	5

1 Rules

2	Fed. R. Civ. P. 23(e)(2)	12
3	Fed. R. Civ. P. 23(e)(2) 2018 Advisory Comm. Notes	12
4	Fed. R. Civ. P. 23.1	2, 22
5	Fed. R. Civ. P. 23.1(c).....	11, 12

5 Treatises

6	Wright & Miller, 7C Fed. Prac. & Proc. Civ. § 1839 (3d ed.).....	12
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**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT**

3 PLEASE TAKE NOTICE that on April 4, 2019, at 2:00 p.m., or as soon as counsel may
4 be heard by the Honorable Jon S. Tigar, United States District Judge, of the United States District
5 Court for the Northern District of California, Phillip Burton Federal Building & United States
6 Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, the Fire and Police Pension
7 Association of Colorado and the City of Birmingham Retirement and Relief System (“Co-Lead
8 Plaintiffs”), Court-appointed Co-Lead Plaintiffs in this shareholder derivative action, will and
9 hereby do move for an order: (1) preliminarily approving the proposed settlement of this action;
10 (2) approving the form and manner of notice of the proposed settlement; and (3) scheduling a
11 final approval hearing to determine whether to approve the proposed settlement and Co-Lead
12 Plaintiffs’ forthcoming motion for an award of attorneys’ fees and representative reimbursement.

13 The grounds for this motion are that the proposed settlement is fair, reasonable, and
14 adequate; that the proposed notice of settlement is appropriate and may be disseminated to
15 shareholders; and that a hearing for the final approval of the proposed settlement should be
16 scheduled. This motion is supported by the following memorandum and points of authorities in
17 support thereof; the Stipulation and Agreement of Compromise, Settlement and Release, dated
18 February 26, 2019, and Exhibits thereto; the Joint Declaration of Richard M. Heimann and Joseph
19 E. White, III in Support of Approval of the Derivative Settlement (“Joint Decl.”); the Declaration
20 of the Honorable Daniel Weinstein (Ret.) in Support of Approval of the Derivative Settlement
21 (“Weinstein Decl.”); the Declaration of Professor Michael Santoro in Support of Approval of the
22 Derivative Settlement (“Santoro Decl.”); the previous filings and orders in this action; and such
23 other matters as the Court may consider.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should preliminarily approve the Settlement¹ based on a finding that its terms fall within the range of possible approval.

2. Whether the Court should approve the proposed form and manner of notice of the Settlement.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Following two years of fiercely contested litigation over “the most difficult legal theory of corporate law,” Court-appointed Co-Lead Plaintiffs Fire and Police Pension Association of Colorado and the City of Birmingham Retirement and Relief System have reached an historic settlement of this shareholder derivative action. This action alleges that the twenty Defendants,² each a current or former officer or director of Wells Fargo & Company (“Wells Fargo” or the “Company”), knew or consciously disregarded that the Company’s employees were illicitly creating millions of customer accounts without those customers’ knowledge or consent (the “Improper Sales Practices”). Through this shareholder derivative action, Co-Lead Plaintiffs have sought to hold Defendants accountable for a scandal that has significantly damaged one of America’s largest financial institutions.

The Settlement confers two categories of benefits to the Company. *First*, the Settlement provides for a cash payment of *\$240 million* from Defendants' insurers to Wells Fargo—by far the *largest insurer-funded cash recovery* of any settlement in a shareholder derivative action. *Second*, Wells Fargo acknowledges that facts alleged in this action were “significant factors” taken into account by the Company and its Board of Directors (the “Board”) in implementing a series of remedial measures to prevent future wrongdoing. These measures include changes to

¹ Unless otherwise defined, capitalized terms appearing in this Motion shall be defined as provided for in the Stipulation & Agreement of Compromise, Settlement and Release dated February 26, 2019, filed concurrently herewith (the “Settlement”).

² Defendants are: (i) John G. Stumpf, Timothy J. Sloan, Carrie L. Tolstedt, John R. Shrewsberry, and Michael J. Loughlin (the “Officer Defendants”); and (ii) John D. Baker II, Elaine L. Chao, John S. Chen, Lloyd H. Dean, Elizabeth A. Duke, Susan E. Engel, Enrique Hernandez, Jr., Donald M. James, Cynthia H. Milligan, Federico F. Peña, James H. Quigley, Judith M. Runstad, Stephen W. Sanger, Susan G. Swenson, and Suzanne M. Vautrinot (the “Director Defendants”).

1 top-level management and the composition of the Board, new and improved internal controls, a
 2 stronger risk management framework, expanded monitoring of Company culture, and enhanced
 3 oversight functions (the “Corporate Governance Reforms”). In addition, the Board reduced
 4 compensation for several senior officers and required others (including Defendants Stumpf and
 5 Tolstedt) to forfeit past compensation (the “Clawbacks”). The Parties have agreed as part of the
 6 Settlement that the portion of the Corporate Governance Reforms and the Clawbacks attributable
 7 to Co-Lead Plaintiffs’ efforts in this action have a combined value to Wells Fargo of \$80
 8 million—for a total Settlement value of *\$320 million*.

9 The Settlement is fair, reasonable, and adequate. Co-Lead Plaintiffs vigorously
 10 prosecuted this case on behalf of the Company and developed a deep understanding of the
 11 strengths and weaknesses of the action. Notwithstanding their confidence in the merits of their
 12 claims, Co-Lead Plaintiffs recognized the challenge of proving at trial that Defendants breached
 13 their fiduciary duties to Wells Fargo by consciously disregarding their oversight responsibilities.
 14 This *Caremark* claim is widely considered the most difficult theory in corporate law for plaintiffs
 15 to win a judgment. The Settlement is also the product of extensive, arm’s-length, and hard-fought
 16 negotiations with the assistance of experienced mediators Hon. Daniel Weinstein (Ret.) and Jed D.
 17 Melnick, Esq. This Settlement represents an extraordinary result for Wells Fargo and its
 18 shareholders and meets all of the requirements of Rule 23.1 of the Federal Rules of Civil
 19 Procedure, due process, and applicable case law. Accordingly, Co-Lead Plaintiffs respectfully
 20 request that the Court grant preliminary approval of the Settlement, approve the form and manner
 21 of notice of the Settlement, and schedule a final Settlement Hearing.

22 **II. BACKGROUND AND PROCEDURAL HISTORY**

23 **A. Factual Background**

24 As detailed in Co-Lead Plaintiffs’ Consolidated Amended Verified Stockholder
 25 Derivative Complaint (the “Complaint”), this case centers on a pattern of misconduct relating to
 26 “cross-selling” at Wells Fargo—*i.e.*, the sale of new products to existing customers. Dkt. 83
 27 (“Compl.”) ¶¶ 1–6. As alleged in the Complaint, for over a decade, Wells Fargo employees
 28 engaged in the Improper Sales Practices in order to inflate the Company’s sales numbers and to

1 meet unrealistic sales goals. *See id.* ¶¶ 1–6, 124–40. Defendants repeatedly touted Wells Fargo’s
 2 cross-selling prowess as the “foundation of [the Company’s] business model and key to [its]
 3 ability to grow revenue and earnings,” explaining that Wells Fargo was “known across its
 4 industry as number one, second to none, for cross-sell and revenue growth.” *Id.* ¶¶ 126–27.

5 From January 1, 2011 through the present (the “Relevant Period”), Co-Lead Plaintiffs
 6 allege that Defendants became aware of significant “red flags” that put them on notice of the
 7 Improper Sales Practices. For example, Defendant and then-CEO Stumpf admitted that he
 8 became aware of an increase in “reports of sales-practice issues in late 2013” and that he
 9 discussed with the Board a December 2013 *Los Angeles Times* article reporting on the widespread
 10 opening of unauthorized accounts around the time it was published. *Id.* ¶¶ 157, 169, 258. In
 11 addition, certain Board committees received reports on sales integrity issues beginning in at least
 12 2011, *id.* ¶¶ 159, 209, including the Risk Committee, *id.* ¶¶ 156, 209, the Audit and Examination
 13 Committee, *id.* ¶¶ 153, 155, 209, the Corporate Responsibility Committee, *id.* ¶¶ 190–91, and the
 14 Human Resources Committee. *Id.* ¶ 156.

15 The Complaint also alleges that because Wells Fargo’s success in cross-selling was
 16 central to its financial results, Defendants were highly motivated to foster and perpetuate the
 17 Improper Sales Practices. *Id.* ¶¶ 124–40. Indeed, the Complaint alleges that the Officer
 18 Defendants personally benefited from a conscious failure to address the misconduct. Defendant
 19 Stumpf was the banking industry’s highest-paid CEO, receiving tens of millions of dollars in
 20 salary and equity compensation every year. *Id.* ¶¶ 2, 70, 282, 294, 308. Defendants Sloan,
 21 Tolstedt, and Shrewsberry received compensation of more than \$40 million, \$45 million, and \$16
 22 million, respectively, between 2011 and 2015. *Id.* ¶¶ 71–73, 282, 294, 308. Moreover, the
 23 Complaint alleges that Defendants Stumpf, Sloan, Tolstedt, and Loughlin capitalized on the
 24 artificial inflation of Wells Fargo shares by collectively selling or otherwise disposing of over
 25 \$629 million in Wells Fargo stock, all while in possession of material, non-public information.
 26 *Id.* ¶¶ 312–94.

27 Beginning in September 2016, public disclosures about the Improper Sales Practices
 28 triggered a wave of fallout. Wells Fargo publicly acknowledged the Improper Sales Practices for

1 the first time when the Company announced settlements with the Los Angeles City Attorney, the
 2 Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau. *Id.*
 3 ¶¶ 412–25. In subsequent oral and written Congressional testimony, Defendant Stumpf
 4 confirmed that between 2011 and 2013, many Board members were receiving “high-level”
 5 information about ethics complaints and noteworthy risk issues, including about conduct related
 6 to the Improper Sales Practices. *Id.* ¶¶ 154–57. By late 2013, as Defendant Stumpf testified, he
 7 became aware of the increased incidence of the Improper Sales Practices and of the *Los Angeles*
 8 *Times* article, and thereafter discussed the issue with the Board. *Id.* ¶ 169. Regulatory scrutiny of
 9 the Company and its senior officials only continued: on February 2, 2018, the Federal Reserve
 10 issued an unprecedented consent order, imposing significant penalties and growth restrictions on
 11 the Company.³ And for over a year, the Company itself has undertaken a nationwide effort to
 12 remedy the harm to consumers and to reestablish trust with stakeholders.⁴

13 **B. Procedural Background**

14 Co-Lead Plaintiffs vigorously prosecuted the action: they prepared a detailed, 189-page
 15 consolidated complaint; prevailed in two rounds of motions to dismiss; successfully obtained
 16 stays or dismissals of at least four related derivative cases pending in other jurisdictions in order
 17 to preserve this Court’s rulings and ensure coordinated resolution on behalf of the Company; and
 18 conducted exhaustive document discovery—before finally reaching a resolution in principle with
 19 Defendants in December 2018.

20 **1. The Operative Complaint and Motions to Dismiss**

21 Following the September 2016 public revelations, several derivative actions were filed in
 22 this Court and consolidated on December 12, 2016. Dkt. 39. In January 2017, the Court
 23 appointed the Fire and Police Pension Association of Colorado and the City of Birmingham
 24 Retirement and Relief System as Co-Lead Plaintiffs, and Lieff Cabraser Heimann & Bernstein,
 25 LLP and Saxena White P.A. as Co-Lead Counsel. Dkt. 70. On February 24, 2017, Co-Lead

26 ³ Order to Cease and Desist Issued Upon Consent Pursuant to the Federal Deposit Insurance Act,
 27 as Amended, *In the Matter of Wells Fargo & Company*, Docket No. 18-007-B-HC (Feb. 2, 2018).

⁴ See, e.g., Press Release, Wells Fargo & Co., Wells Fargo Launches “Re-Established,” a New
 28 Brand Campaign (May 7, 2018), <https://newsroom.wf.com/press-release/marketing-and-sponsorships/wells-fargo-launches-re-established-new-brand-campaign>.

1 Plaintiffs filed the Complaint, asserting, on behalf of Wells Fargo, breaches of fiduciary duty,
 2 unjust enrichment, violations of the Securities Exchange Act of 1934, violations of Sections
 3 25402 and 25403 of the California Corporations Code, corporate waste, and contribution and
 4 indemnification from certain Defendants. Dkt. 83.

5 On May 4, 2017, the Court largely denied Wells Fargo’s motion to dismiss the Complaint
 6 for a failure to adequately plead demand futility, finding that “[t]he extensive and detailed
 7 allegations in the complaint plausibly suggest that a majority of the Director Defendants” had
 8 “*consciously* disregarded an obligation to be reasonably informed about the business and its risks
 9 or *consciously* disregarded the duty to monitor and oversee the business.” Dkt. 129 (“Demand
 10 Futility Order”) at 17 (emphases in original) (citation omitted). The Court also highlighted
 11 particular “red flags” that “collectively . . . support[ed] an inference that a majority of the
 12 Director Defendants consciously disregarded their fiduciary duties despite knowledge regarding
 13 widespread illegal account-creation activities, and . . . that there is a substantial likelihood of
 14 director oversight liability.” *Id.* at 24.

15 One month after the Demand Futility Order, each Defendant moved again to dismiss the
 16 Complaint for failure to state a claim. *See* Dkts. 139–41, 143–45. Co-Lead Plaintiffs filed a 70-
 17 page omnibus opposition to the motions to dismiss. Dkt. 151. On October 4, 2017, the Court
 18 denied in large part Defendants’ motions to dismiss. Dkt. 174 (“12(b)(6) Order”).

19 **2. Co-Lead Plaintiffs Stayed and Coordinated Related Derivative Actions**

20 Following issuance of the Demand Futility Order and the 12(b)(6) Order, Co-Lead
 21 Plaintiffs undertook a comprehensive nationwide effort to coordinate related derivative actions in
 22 order to preserve their standing to pursue claims on behalf of the Company, avoid unnecessary
 23 and duplicative efforts, and prevent inconsistent outcomes in those proceedings. *First*, Co-Lead
 24 Plaintiffs successfully sought to stay or dismiss similar claims in concurrently pending actions in
 25 California and Delaware state courts. Doing so ensured that potentially adverse determinations in
 26 those cases would not have collateral estoppel effects in this Court. *Second*, Co-Lead Plaintiffs
 27 moved to relate or consolidate similar derivative actions in this Court, to ensure that all derivative
 28 claims related to the Improper Sales Practices would be adjudicated through a single action. Co-

1 Lead Plaintiffs thereby saved the Company from unnecessary litigation expenses and ultimately
 2 obtained this Settlement, which will assist in the prompt resolution of all other derivative actions
 3 concerning the Improper Sales Practices.

4 **a. Co-Lead Plaintiffs Obtained Stays of All California Actions**

5 Around the same time this action was commenced, other derivative lawsuits were filed in
 6 San Francisco Superior Court and consolidated into a single proceeding, *In re Wells Fargo & Co.*
 7 *Derivative Litigation*, No. CGC 16-554407 (Cal. Super. Ct.) (the “California State Derivative
 8 Action”). The California State Derivative Action never advanced beyond the pleadings. On May
 9 10, 2017, six days after this Court issued its Demand Futility Order, the state court sustained
 10 defendants’ demurrers with leave to amend, for failure to allege facts establishing demand
 11 futility.⁵ A final adverse judgment in the state court proceedings regarding demand futility could
 12 threaten to undermine this Court’s order to the contrary. To avoid that result, on May 26, 2017,
 13 Co-Lead Plaintiffs moved to intervene in and stay the California State Derivative Action. On
 14 July 28, 2017, after finding that “[Co-Lead Plaintiffs’] interests could be severely impacted by the
 15 proceedings in this court,”⁶ the state court permitted intervention by Co-Lead Plaintiffs and
 16 entered a general stay of the California State Derivative Action.⁷ And on November 30, 2017,
 17 following this Court’s 12(b)(6) Order, the state court entered a partial stay of that case, staying
 18 those portions of the claims that overlapped with claims asserted in this action.⁸

19 The parties in the California State Derivative Action proceeded to brief a second round of
 20 demurrers. On April 25, 2018, the state court sustained the demurrer finding that plaintiffs had
 21 again failed to plead demand futility as to the non-stayed causes of action, noted that “it may not

22 ⁵ Order Sustaining Dems. in Part with Leave to Amend & in Part without Leave to Amend &
 23 Setting Case Mgmt. Conf., California State Derivative Action (May 10, 2017).

24 ⁶ Order re Mot. for Leave to Intervene & for a Stay, California State Derivative Action (July 10,
 2017).

25 ⁷ Order Granting Mot. for Leave to Intervene & for a Stay, California State Derivative Action
 (July 28, 2017).

26 ⁸ Case Mgmt. Order No. 4 & Order on Stay, California State Derivative Action (Nov. 30, 2017).
 27 Specifically, the state court stayed the California State Derivative Action except as to (i) the state
 28 plaintiffs’ fourth cause of action for breach of fiduciary duty for insider selling and
 misappropriation of information, and (ii) other causes of action to the extent they accrued during
 the time period preceding the Relevant Period in this action (*i.e.*, alleged misconduct prior to
 2011) and relate to damages incurred during the period prior to 2011.

1 be in the best interests of Wells Fargo . . . to proceed now with the claims remaining,” and
 2 ordered further briefing as to whether it should impose a general stay of the case.⁹ On May 14,
 3 2018, after Co-Lead Plaintiffs submitted further briefing in support of a stay, the state court
 4 concluded that “a full stay is best now to preserve the derivative claims” and stayed the California
 5 State Derivative Action in its entirety.¹⁰

6 On January 30, 2018, plaintiff Joan Herron initiated a second state court derivative action
 7 arising from the Improper Sales Practices, in San Mateo Superior Court, *Herron v. Stumpf*, No.
 8 18-CIV-00466 (Cal. Super. Ct.) (the “*Herron* Action”). After the *Herron* Action was coordinated
 9 with the California State Derivative Action, Co-Lead Plaintiffs successfully intervened and
 10 moved to stay the *Herron* Action entirely, for the same reasons described above.¹¹

11 **b. Co-Lead Plaintiffs Obtained a Stay or Dismissal of the**
 12 **Delaware Actions.**

13 Two derivative actions were separately filed in the Delaware Court of Chancery:
 14 *Connecticut Laborers Pension & Annuity Funds v. Stumpf*, C.A. No. 2017-0380-SG (Del. Ch.
 15 filed May 17, 2017) (the “*Connecticut Laborers* Action”), and *Rosenfeld v. Stumpf*, C.A. No.
 16 2017-0383 (Del. Ch. filed May 18, 2017) (the “*Rosenfeld* Action”). In the *Rosenfeld* Action, Co-
 17 Lead Plaintiffs moved to intervene and stay the case on January 12, 2018. While that motion was
 18 still pending, the parties filed, and the Delaware court granted, a stipulation to dismiss the
 19 *Rosenfeld* Action, with prejudice only as to plaintiff Barry Rosenfeld.¹²

20 Similarly, on April 6, 2018, Co-Lead Plaintiffs filed a motion to intervene and stay
 21 proceedings in the *Connecticut Laborers* Action. Notably, defendants in that action (all named as
 22 Defendants here) opposed Co-Lead Plaintiffs’ motion and specifically requested that the
 23 Delaware court issue a decision contrary to this Court’s Demand Futility Order and 12(b)(6)
 24 Order, citing “ongoing confusion” and “diverging decisions” in this action and the California
 25 State Derivative Action. *See* Dkt. 223. On July 11, 2018, after a hearing on the motion and

26 ⁹ Order on Demurrer & Request for Further Briefing, California State Derivative Action (Apr. 25,
 27 2018).

¹⁰ Order Imposing General Stay, California State Derivative Action (May 14, 2018).

¹¹ Order Granting Mot. to Stay *Herron* Action (July 11, 2018).

¹² Stipulation & Order of Dismissal, *Rosenfeld* Action (May 11, 2018).

1 finding “that there’s a possibility of inconsistent judgments, that efficiency supports a stay, [and]
 2 that comity supports a stay,”¹³ the Chancery Court stayed the *Connecticut Laborers Action*
 3 pending resolution of this action.¹⁴

4 **c. Co-Lead Plaintiffs Sought to Consolidate or Foreclose Several**
Late-Filed Derivative Actions in This Court.

5
 6 Well after this Court consolidated the original related shareholder derivative actions
 7 before it, appointed lead plaintiffs, and issued its Demand Futility Order and 12(b)(6) Order, a
 8 second wave of late-filed complaints came before this Court. In each instance, the Court resolved
 9 potential conflicts by ensuring that Co-Lead Plaintiffs would continue to represent the Company’s
 10 interests on behalf of all shareholders and to ensure resolution of all derivative claims relating to
 11 the Improper Sales Practices.

12 On December 20, 2017, plaintiff George Hannon filed, in *Hannon v. Loughlin*, No. 3:17-
 13 cv-07236-JST (N.D. Cal.) (“*Hannon II*”), a shareholder derivative complaint that was nearly
 14 identical to the one he filed a year earlier.¹⁵ Mr. Hannon’s new complaint added two California
 15 causes of action against American Express Company. After the Court granted Co-Lead Plaintiffs’
 16 administrative motion to relate *Hannon II*, *see* Dkt. 197, Co-Lead Plaintiffs moved to consolidate
 17 *Hannon II* with this action. Dkt. 204. On May 2, 2018, the Court granted Co-Lead Counsel’s
 18 motion and consolidated *Hannon II* with this action, after concluding that “there is good reason to
 19 believe that [Mr. Hannon’s] counsel’s dominant purpose in adding claims against American
 20 Express was simply to escape the Court’s prior order of consolidation.” Dkt. 219 at 2.¹⁶

21 On May 6, 2018, plaintiff R.A. Feuer filed a shareholder derivative complaint, in *Feuer v.*
 22 *Baker*, No. 3:18-cv-02866-JST (N.D. Cal.) (the “*Feuer Action*”). Given the broad scope of Mr.

23 ¹³ Transcript of Telephonic Oral Argument on Pls.’ & Federal Pls.’ Mots. to Stay & Rulings of
 24 the Court, *Connecticut Laborers Action* (June 12, 2018).

25 ¹⁴ Order to Stay Proceedings, *Connecticut Laborers Action* (July 11, 2018).

26 ¹⁵ Plaintiff Hannon filed his first complaint on November 15, 2016. *Hannon v. Loughlin*, No.
 27 3:16-cv-06624 (N.D. Cal.) (“*Hannon I*”). This Court consolidated *Hannon I* into this action. *See*
 Dkt. 39. Mr. Hannon and his counsel unsuccessfully sought to be appointed lead plaintiff and
 counsel, respectively, *see* Dkt. 36, and shortly thereafter, Mr. Hannon’s counsel filed a separate
 unsuccessful motion to be appointed lead counsel, *see* Dkt. 41.

28 ¹⁶ On June 1, 2018, Hannon sought interlocutory review of the Court’s consolidation order. *See*
 Dkt. 226; *Hannon v. Am. Express Co.*, No. 18-16115 (9th Cir.). That appeal is pending.

1 Feuer's claims—both relating to Improper Sales Practices and other unrelated misconduct—Co-
 2 Lead Plaintiffs sought and the Court approved a stipulation, signed by all parties including
 3 plaintiff Feuer, that (i) the *Feuer* complaint cannot be construed to assert claims based on the
 4 Improper Sales Practices, and (ii) Mr. Feuer cannot assert claims for any relief involving the
 5 Improper Sales Practices. Dkt. 252. The remaining claims in the *Feuer* Action are neither related
 6 to this case nor released by the Settlement.¹⁷

7 **3. Discovery From Wells Fargo, Individual Defendants, and Non-Parties**

8 Following the 12(b)(6) Order, Co-Lead Plaintiffs sought and obtained extensive document
 9 discovery from Wells Fargo, the Individual Defendants, and several non-parties; engaged in
 10 iterative negotiations over the adequacy of their discovery responses; and pursued relevant
 11 information from the Federal Reserve. The Parties also agreed to an expedited case schedule
 12 providing for substantial completion of document production in less than nine months. *See* Dkt.
 13 199.

14 Document discovery commenced on November 3, 2017, when Co-Lead Plaintiffs served
 15 Wells Fargo with their first set of document requests. Following extensive negotiations between
 16 the Parties over a search protocol, Wells Fargo made its initial document production on March 7,
 17 2018. In total, over the course of approximately seven months, Wells Fargo made fourteen
 18 productions of documents spanning 16 years and hundreds of custodians. In October 2018, Co-
 19 Lead Plaintiffs and Wells Fargo engaged in further meet and confer communications, which
 20 resulted in Wells Fargo agreeing to produce an additional 520,000 responsive documents,
 21 comprising over 2.5 million pages. Co-Lead Plaintiffs also negotiated with counsel for the
 22 Individual Defendants and received document productions from each. Additionally, Co-Lead
 23 Plaintiffs subpoenaed seven non-parties who collectively produced over 4,000 pages. In total,
 24 Co-Lead Plaintiffs obtained 727,679 documents comprising 3,529,385 pages and reviewed over
 25 1.1 million pages of documents before reaching an agreement in principle to settle the case. In
 26 conducting discovery, Co-Lead Plaintiffs employed efficient measures—specifically, technology-

27 ¹⁷ Similarly, on May 17, 2018, plaintiff Timothy Himstreet filed a derivative complaint relating
 28 to the Improper Sales Practices, in *Himstreet v. Sloan*, 3:18-cv-02922-JST (N.D. Cal.). On
 August 9, 2018, Mr. Himstreet voluntarily dismissed his action. *Himstreet*, Dkt. 29.

1 assisted review software—to identify for manual review documents most likely to be both unique
 2 and relevant to the claims and defenses in the case. In addition, by late 2018, Co-Lead Counsel
 3 had begun earnestly and conscientiously to prepare for the initial depositions of the more than
 4 forty anticipated fact witnesses.

5 **4. Mediation and Settlement**

6 The Settlement is the product of extensive negotiations, including multiple, bi-coastal
 7 mediation sessions before nationally renowned mediators. Settlement negotiations took place in
 8 earnest beginning in 2017 following the Demand Futility Order. However, after three mediation
 9 sessions, the Parties were unable to reach a resolution. In September 2018, following months of
 10 discovery and Co-Lead Plaintiffs' successful efforts to stay or consolidate the related derivative
 11 actions, the Parties engaged in a second round of negotiations under the auspices of Judge Daniel
 12 Weinstein (Ret.) and Jed D. Melnick, Esq. Over four separate day-long sessions in San Francisco
 13 and New York City, the Parties engaged in mediation. The sessions involved detailed
 14 presentations on liability, damages, and the documentary evidence obtained in discovery, along
 15 with serial expert presentations on these issues. Weinstein Decl. ¶ 7.

16 In all, the Parties prepared and exchanged at least five rounds of written submissions
 17 addressing legal and factual disputes, communicated with the mediators, and negotiated directly
 18 with each other. As described below, the settlement negotiations were complex, at arm's length,
 19 and hard fought. The Parties' mediation efforts culminated in a final session on December 4,
 20 2018. On December 5, 2018, Judge Weinstein made a comprehensive mediator's proposal, which
 21 the Parties accepted on December 12, 2018. Judge Weinstein's proposal is the basis for the
 22 Settlement now before the Court, which the Parties present as a fair and principled conclusion to
 23 this action.

24 **III. SETTLEMENT TERMS**

25 Consideration. The Settlement contains two components: (1) a monetary payment of \$240
 26 million from Defendants' insurers to Wells Fargo; and (2) the Corporate Governance Reforms,
 27 *see* Settlement, Ex. A, and the Clawbacks, *see* Settlement, Ex. B, for which Wells Fargo agrees
 28 and acknowledges that facts alleged in the Complaint were significant factors in the determination

1 to undertake those remedial actions. The Parties agree that the Corporate Governance Reforms
 2 and the Clawbacks attributable to Co-Lead Plaintiffs' efforts conferred a benefit to Wells Fargo
 3 of \$80 million, for a total Settlement value of \$320 million. Critically, the Corporate Governance
 4 Reforms ensure greater Board oversight, "completely eliminate the sales incentives that
 5 encouraged employees to defraud customers," and resolve Board-level structural issues. Santoro
 6 Decl. ¶ 48. In the opinion of Professor Michael Santoro, Co-Lead Plaintiffs' expert on corporate
 7 governance, the Corporate Governance Reforms "represent a major step forward for Wells
 8 Fargo's overall corporate governance that not only creates substantial and sustainable value for
 9 the Company and its shareholders, but also helps to protect the public and the Company's
 10 customers from future abuse and wrongdoing." *Id.* at ¶ 4.

11 Release. In exchange for the consideration described above, the Settlement provides that
 12 Co-Lead Plaintiffs will release, on behalf of the Company, all claims arising from facts alleged in
 13 this action or any of several related state court actions—including all claims related to the
 14 Improper Sales Practices. Settlement ¶¶ 37-38. The Settlement also provides for the release of
 15 claims against American Express, and against defendants named in the related state court actions,
 16 including certain other current or former directors. Settlement ¶¶ 25-27.¹⁸

17 Attorney's Fees, Costs, and Representative Reimbursement. In accordance with the
 18 Settlement, Co-Lead Plaintiffs intend to seek a Court-approved award of attorney's fees, which
 19 was separately negotiated after the Parties agreed on the Settlement terms and which Wells Fargo
 20 fully supports. In addition, Co-Lead Plaintiffs intend to seek reimbursement for their time and
 21 costs associated with these proceedings—such amount to be deducted from the Court-awarded
 22 attorney's fees. No separate reimbursement of expenses or other awards will be sought.

23 **IV. LEGAL STANDARD**

24 Under Rule 23.1(c) of the Federal Rules of Civil Procedure, "[a] derivative action may be
 25 settled . . . only with the court's approval." Reflecting "a strong judicial policy" that favors
 26 settlement in complex cases, district courts have broad discretion to approve settlements in

27
 28 ¹⁸ These individuals include Richard D. McCormick, Mackey J. McDonald, Nicholas G. Moore,
 Philip J. Quigley, and Howard V. Richardson. *See* Settlement ¶ 14.

1 shareholder derivative actions. *See In re Hewlett-Packard Co. S'holder Derivative Litig.*, 716 F.
 2 App'x 603, 605 (9th Cir. 2017); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995);
 3 *see also In re NVIDIA Corp. Derivative Litig.*, No. C-06-06110-SBA (JCS), 2008 WL 5382544,
 4 at *2 (N.D. Cal. Dec. 22, 2008) (“Because shareholder derivative actions are notoriously difficult
 5 and unpredictable . . . settlements are favored.” (citation and internal quotation marks omitted)).
 6 In evaluating settlements in derivative actions, courts have routinely looked to cases involving
 7 class action settlements under Rule 23(e) as “relevant by analogy.” Wright & Miller, 7C Fed.
 8 Prac. & Proc. Civ. § 1839 (3d ed.); *see, e.g., Pac. Enters.*, 47 F.3d at 377; *Lloyd v. Gupta*, No. 15-
 9 cv-04183-MEJ, 2016 WL 3951652, at *4 (N.D. Cal. July 22, 2016).

10 Approval of a settlement in a derivative action proceeds in two steps. At the preliminary
 11 approval stage, the court conducts an initial evaluation of proposed settlement terms to determine
 12 whether they fall “within the range of possible approval” as fair, reasonable, and adequate. *See*
 13 *NVIDIA Corp.*, 2008 WL 5382544, at *2. In doing so, the court should look to (1) whether
 14 plaintiffs effectively represented the interests of the corporation and its shareholders; (2) whether
 15 the settlement results from serious, informed, arm’s-length negotiations; and (3) whether the
 16 settlement’s substantive terms are in the interests of the corporation and its shareholders. *Lloyd*,
 17 2016 WL 3951652, at *4.¹⁹ Upon preliminary approval, the court then directs notice of the
 18 proposed settlement to shareholders. Fed. R. Civ. P. 23.1(c). The Ninth Circuit has “generally
 19 held notice to be satisfactory where it ‘describes the terms of the settlement in sufficient detail to
 20 alert those with adverse viewpoints to investigate and to come forward and be heard.’” *Hewlett-*
 21 *Packard*, 716 F. App’x at 609 (citing *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th

22 ¹⁹ Recent amendments to Rule 23(e), which governs class actions and not derivative suits, but is
 23 nonetheless relevant by analogy, now explicitly set forth factors to consider in determining
 24 whether a proposed settlement is “fair, reasonable, and adequate.” *See* Fed. R. Civ. P. 23(e)(2).
 25 Specifically, the Rule now requires courts to consider whether: (i) class representatives and class
 26 counsel have adequately represented the class; (ii) the proposal was negotiated at arm’s length;
 27 (iii) the relief provided for the class is adequate; and (iv) the proposal treats class members
 28 equitably. *Id.* These factors reflect considerations that courts in the Northern District have long
 taken into account in the class action context. *See, e.g., In re Chrysler-Dodge-Jeep Ecodiesel*
Mktg., Sales Practices, and Prods. Liab. Litig., 2019 WL 536661, at *8 (N.D. Cal. Feb. 11, 2019).
 Consistent with case law governing derivative settlements, these factors reflect both procedural
 concerns (*e.g.*, the conduct of the litigation and of negotiations leading to the proposed settlement)
 and substantive concerns (*e.g.*, the relief provided). *See* Fed. R. Civ. P. 23(e)(2) 2018 Advisory
 Comm. Notes.

1 Cir. 2004)); *see also In re HQ Sustainable Mar. Indus., Inc., Derivative Litig.*, No. C11-0910
 2 RSL, 2013 WL 3191867, at *3 (W.D. Wash. June 20, 2013) (notice of proposed settlement must
 3 be “best notice practicable under the circumstances” and comport with due process requirements).

4 Following notice to shareholders, the court holds a final fairness hearing to consider
 5 approval of the settlement as fair, reasonable, and adequate. *See NVIDIA Corp.*, 2008 WL
 6 5382544, at *2; *accord In re MRV Commc’ns, Inc. Derivative Litig.*, No. CV 08-03800 GAF
 7 (MANx), 2013 WL 12210256, at *2 (C.D. Cal. Apr. 8, 2013). “[C]loser scrutiny” is reserved for
 8 this stage of the approval process. *MRV Commc’ns*, 2013 WL 12210256, at *2 (quoting *Harris v.*
 9 *Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011)).

10 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

11 The Parties have reached an historic Settlement that achieves not only significant
 12 monetary benefit for the Company but also meaningful corporate governance reforms that are
 13 designed to reduce the likelihood of future misconduct. In assessing the substantive
 14 reasonableness and adequacy of a proposed settlement, courts consider a number of factors,
 15 including the strength of a plaintiff’s case; the extent of discovery completed and the stage of the
 16 proceedings; the amount offered in settlement; the risk, expense, complexity, and likely duration
 17 of further litigation; and the experience and views of counsel. *See In re Oclaro, Inc. Derivative*
 18 *Litig.*, No. C-11-3176 EMC, 2014 WL 4684993, at *1 (N.D. Cal. Sept. 19, 2014) (citing *In re*
 19 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000)). Considering the extraordinary
 20 efforts of Co-Lead Plaintiffs and their counsel, the strengths of Co-Lead Plaintiffs’ claims, and
 21 the risks inherent in continued litigation, preliminary approval of the Settlement is warranted.

22 **A. Co-Lead Plaintiffs Vigorously Pursued This Litigation**

23 Co-Lead Plaintiffs and their counsel zealously advocated for the interests of the Company
 24 and have obtained excellent results. Co-Lead Plaintiffs’ decision to settle this case was informed
 25 by a thorough investigation of the relevant claims; the filing of a detailed Complaint; success in
 26 defeating two motions to dismiss; active intervention in, stays of, and dismissals of multiple state
 27 court actions; consolidation and coordination with related federal actions; extensive review of
 28

1 documents from Defendants, Wells Fargo, and numerous third parties; consultation with experts;
 2 and research and preparation for depositions.

3 Following Wells Fargo's announcement of settlements with several government agencies
 4 and its public acknowledgement of the underlying misconduct, Co-Lead Plaintiffs individually
 5 undertook considerable investigation and filed detailed complaints against the Defendants. Joint
 6 Decl. ¶ 9.²⁰ After their appointment as Co-Lead Plaintiffs, they conducted further investigation
 7 and filed a comprehensive 189-page consolidated complaint. *Id.* at ¶ 10. The Parties then briefed
 8 two rounds of motions to dismiss, involving six separate motions and fourteen briefs. *Id.* at ¶ 11.
 9 The Court's Demand Futility Order and 12(b)(6) Order predominantly sustained those claims.

10 Following the Court's favorable decisions, Co-Lead Plaintiffs made an extensive effort to
 11 intervene and stay a host of related cases pending in state courts, in order to protect the interests
 12 of the Company and its shareholders, and ensure efficient, non-duplicative pursuit of those claims.
 13 *See Section II.B.2, supra.* Co-Lead Plaintiffs sought and eventually obtained complete stays or
 14 voluntary dismissals of all related derivative actions. These efforts, which spanned over fourteen
 15 months, required submission of at least thirteen briefs on behalf of Co-Lead Plaintiffs, as well as
 16 attendance (and argument) in at least seventeen hearings. Joint Decl. at ¶ 13. In addition, Co-
 17 Lead Plaintiffs have, to date, submitted at least four briefs (to this Court and the Ninth Circuit)
 18 concerning consolidation of the *Hannon II* Action, and engaged in extensive coordination with
 19 parties in the *Feuer* Action in order to avoid unnecessary duplication and conflict with those cases.
 20 *Id.* at ¶ 14.

21 Co-Lead Plaintiffs aggressively pursued document discovery from Wells Fargo, the
 22 Individual Defendants, and non-parties, in compliance with the Court-approved discovery
 23 schedule. Co-Lead Plaintiffs served a total of 204 document requests, and conducted extensive
 24 and iterative negotiations regarding the appropriate scope of discovery. In total, Co-Lead
 25 Plaintiffs received 707,835 documents from Wells Fargo, 19,844 documents from the Individual

26 _____
 27 ²⁰ *See Verified Stockholder Derivative Compl., Fire & Police Pension Ass'n of Colorado v.*
 28 *Stumpf*, No. 3:16-cv-06631-JST (N.D. Cal. Nov. 15, 2016), Dkt. 1; *Verified Stockholder*
Derivative Compl., City of Birmingham Ret. & Relief Sys. v. Baker, No. 3:16-cv-05915-JST (N.D.
 Cal. Oct. 12, 2016), Dkt. 1.

1 Defendants, and 62 documents from non-parties. *Id.* at ¶ 15. Co-Lead Plaintiffs then manually
 2 reviewed and carefully analyzed over 332,000 documents, using technology-assisted review
 3 software to first identify the documents most likely to be relevant to the central issues in the case
 4 and greatly minimize review of extraneous or duplicative materials. *Id.* at ¶ 18. Co-Lead
 5 Plaintiffs also began a comprehensive process of preparing for the depositions of over forty
 6 anticipated fact witnesses, including the twenty named Defendants. *Id.* at ¶ 19. Concurrently,
 7 Co-Lead Plaintiffs consulted with experts in corporate governance, regulatory matters, insurance
 8 coverage, and damages. *Id.* at ¶ 20.

9 The Settlement is demonstrably the product of well-informed negotiations and vigorous
 10 advocacy on behalf of the Company. At the time Co-Lead Counsel agreed to a compromise of
 11 their claims—after over two years of intense litigation and after a year of copious discovery—
 12 they had obtained a thorough understanding of the strengths and weaknesses of the claims and
 13 defenses in this case. Co-Lead Plaintiffs possessed “sufficient information to make an informed
 14 decision about settlement.” *See Hefler v. Wells Fargo & Co.*, No. 3:16-cv-05479-JST, 2018 WL
 15 4207245, at *10 (N.D. Cal. Sept. 4, 2018).

16 **B. The Settlement Results From Good-Faith, Arm’s-Length Negotiations**

17 The Settlement arises out of serious, informed, and non-collusive negotiations between the
 18 experienced counsel for Co-Lead Plaintiffs, Wells Fargo, Defendants, and Defendants’ insurers.
 19 By the time they came to agreement, the Parties had benefited from extensive motion practice and
 20 document discovery, affording them the opportunity to carefully consider the unique legal and
 21 factual issues at stake in this case.

22 Moreover, the Settlement only came about after seven in-person mediation sessions under
 23 the guidance of experienced and prominent mediators, as well as numerous direct negotiations
 24 between counsel. The Parties began preliminary settlement discussions in 2017, before this Court
 25 issued its 12(b)(6) Order. Then, after the Court upheld nearly all of Co-Lead Plaintiffs’ claims
 26 and after significant document discovery, the Parties restarted negotiations in 2018, under the
 27 supervision of the Honorable Daniel Weinstein (Ret.), and Mr. Jed Melnick. After two rounds of
 28 written submissions and four intense days of mediation with Judge Weinstein and Mr. Melnick,

1 which culminated in the mediator's proposal to the Parties on December 5, 2018, the Parties
 2 reached a settlement in principle on December 12, 2018. *See* Weinstein Decl. ¶ 12; Joint Decl.
 3 ¶ 6. Accordingly, the advanced posture of this case and the deliberative nature of the negotiations
 4 evidence a fair process involving good-faith arm's-length bargaining. *See, e.g.*, *Hefler*, 2018 WL
 5 4207245, at *9 ("[I]n light of the fact that the Settlement was reached after the parties engaged in
 6 motion practice and participated in multiple days of formal mediation, the Court concludes that
 7 the negotiations and agreement were non-collusive"); *HCL Partners Ltd. P'ship v. Leap Wireless*
 8 *Int'l, Inc.*, Nos. 07 CV 2245 MMA, 08-CV-0128 MMA, 2010 WL 4027632, at *2 (S.D. Cal. Oct.
 9 14, 2010) ("Counsel for the parties participated in arm's length negotiations for several months
 10 before reaching an agreement. All parties are represented by competent, experienced litigators,
 11 and the active involvement of the Honorable Weinstein (Ret.) as a mediator . . . weighs
 12 considerably in favor of concluding this is not a collusive settlement"); *NVIDIA Corp.*, 2008 WL
 13 5382544, at *3 ("The Settlement was negotiated by experienced counsel on behalf of all parties,
 14 the parties appear to have engaged in significant negotiations, including at least four formal
 15 mediation sessions, and the parties were assisted by an experienced mediator in the reaching the
 16 Settlement.").

17 **C. The Settlement Confers Substantial Benefits to the Company**

18 The Settlement results in substantial benefits to the Company in the form of both
 19 monetary and non-monetary components—valued at \$320 million in the aggregate. First and
 20 foremost, the Settlement provides a \$240 million insurer-funded cash payment to the Company—
 21 the largest of its kind. By comparison, no derivative settlement has previously involved an
 22 insurer-funded payment in excess of \$139 million. The following table summarizes the largest
 23 known insurer-funded cash recoveries in shareholder derivative actions.

25 Case Name & Citation	26 Insurer-Funded Cash Recovery	27 Other Benefits
28 <i>In re Wells Fargo S'holder Derivative Litig.</i> (N.D. Cal.)	\$240 million	Changes to management and board composition, enhanced internal controls and risk management, other corporate governance reforms, clawback of compensation

Case Name & Citation	Insurer-Funded Cash Recovery	Other Benefits
<i>In re News Corp. S'holder Derivative Litig.</i> , C.A. No. 6285-VCN, 2013 WL 1914773 (Del. Ch. May 3, 2013)	\$139 million	Changes to compliance infrastructure, board composition, and management succession and compensation
<i>In re Broadcom Corp. Derivative Litig.</i> , No. 2:06-cv-03252-R-CW (C.D. Cal. Aug. 28, 2009), Dkt. 432	\$118 million	Repricing and cancellation of certain stock options
<i>City of Monroe Emps.' Ret. Sys. v. Murdoch</i> , C.A. No. 2017-0833-AGB (Del. Ch. 2017)	\$90 million	Certain corporate governance enhancements
<i>In re Pfizer Inc. S'holder Derivative Litig.</i> , No. 1:09-cv-07822-JSR (S.D.N.Y. Dec. 14, 2010), Dkt. 95	\$75 million	Corporate governance reforms funded by cash
<i>In re Bank of Am. Corp. Sec., Derivative & ERISA Litig.</i> , No. 1:09-md-02058-PKC (S.D.N.Y. Jan. 18, 2013), Dkt. 795-3	\$62.5 million	Certain corporate governance enhancements
<i>In re Activision Blizzard, Inc. Stockholder Litig.</i> , 124 A.3d 1025 (Del. Ch. 2015) ²¹	approx. \$57.5 million	Payments from other defendants, addition of two new independent directors, reducing voting power of insiders

The Corporate Governance Reforms and Clawbacks also provide considerable additional value and benefits to Wells Fargo, which also weigh in favor of preliminary approval. As Co-Lead Plaintiffs' corporate governance expert Professor Michael Santoro, opines, the Corporate Governance Reforms "are sufficient to prevent the recurrence of the Improper Sales Practices or similar misconduct in the Company's Community Bank sector." Santoro Decl. ¶ 53.

Accordingly, the amount of the Settlement and the benefits conferred to Wells Fargo through the Corporate Governance Reforms and Clawbacks weigh heavily in favor of preliminary approval.

In total, the benefits of the Settlement are unparalleled, comprising the largest shareholder derivative recovery in history—an extraordinary result for Wells Fargo and its shareholders.

D. The Strength of Co-Lead Plaintiffs' Claims

Co-Lead Plaintiffs assert uniquely strong claims in this case. Co-Lead Plaintiffs allege that Wells Fargo's senior executives and members of the Board were aware of ongoing

²¹ The settlement agreement in *Activision* also provided for payment from two corporate defendants in excess of \$217.5 million. See *In re Activision*, 124 A.3d at 1042.

1 misconduct at the Company for years, and that Defendants consciously disregarded their
 2 responsibilities during the Relevant Period. This Court recognized the strength of Co-Lead
 3 Plaintiffs' allegations through its Demand Futility Order and 12(b)(6) Order, when it determined
 4 that the facts as pled give rise to cognizable claims and support Co-Lead Plaintiffs' standing to
 5 pursue these claims on the Company's behalf.

6 Subsequent events and document discovery support Co-Lead Plaintiffs' claims. In early
 7 2018, the Federal Reserve Board directly implicated the Company's failure to maintain adequate
 8 risk management and internal control functions. Concurrently, the Federal Reserve Board
 9 implemented the unprecedented step of prohibiting Wells Fargo from growing its asset base until
 10 it sufficiently improved its corporate governance and controls. Documents produced in the case
 11 bolstered the picture of the alleged misconduct.

12 By the time the Parties reached an agreement to settle this case, Co-Lead Plaintiffs
 13 conservatively estimated that Defendants' alleged misconduct had caused hundreds of millions of
 14 dollars in regulatory and civil fines, penalties, and payments directly attributable to the Improper
 15 Sales Practices. In addition, Co-Lead Plaintiffs estimated that Wells Fargo's ongoing remediation
 16 efforts, the Federal Reserve Board's growth restrictions, lost profits and business, and
 17 reputational harm had caused and would continue to cause the Company ongoing harm.

18 Given the evidentiary record developed by Co-Lead Plaintiffs' vigorous prosecution of the
 19 litigation, Co-Lead Plaintiffs were well-positioned to continue litigating this case through trial.
 20 Nonetheless, for the reasons detailed above, Co-Lead Plaintiffs strongly advocated that the
 21 strength of their case merited a commensurately historic Settlement.

22 **E. Risk, Expenses, and Delay Associated with Continued Litigation**

23 Despite Co-Lead Plaintiffs' confidence in the strengths of their case, significant risks
 24 remained in continuing to litigate this action through trial and a near-certain appeal.

25 *First*, the derivative nature of this litigation compels Co-Lead Plaintiffs to act in the best
 26 interests of the Company and its shareholders. Accordingly, despite their confidence in their
 27 claims, Co-Lead Plaintiffs faced countervailing pressures to minimize continued damage to the
 28 Company caused by protracted litigation. Continued litigation would have (i) taken at least

1 another year (if not more), at significant cost to Wells Fargo; (ii) subjected the Company to the
 2 disruption and uncertainty inherent in a trial on the issues; and (iii) deprived the Company of an
 3 opportunity to move past the scandal. Thus, in broad terms, Co-Lead Plaintiffs were motivated to
 4 achieve meaningful results for Wells Fargo while at the same time putting the Company in the
 5 best possible position to move its business forward.

6 *Second*, Co-Lead Plaintiffs' core *Caremark* fiduciary duty claim²² is notoriously difficult
 7 to prove. To succeed, Co-Lead Plaintiffs bear the burden of establishing that Defendants (i) had
 8 actual or constructive knowledge of the misconduct, and (ii) failed to act in the face of a known
 9 duty to act, thereby demonstrating conscious disregard for their responsibilities. *Rosenbloom v.*
 10 *Pyott*, 765 F.3d 1137, 1151 (9th Cir. 2014); *Stone v. Ritter*, 911 A.2d 362, 368 (Del. 2006). As
 11 the *Caremark* court noted, the theory of liability advanced through such a claim "is possibly the
 12 most difficult theory in corporation law upon which a plaintiff might hope to win a judgment."
 13 *Caremark*, 698 A.2d at 967. Moreover, the Ninth Circuit has noted that "the odds of winning
 14 [any] derivative lawsuit [are] extremely small," in part because "derivative lawsuits are rarely
 15 successful." *Pac. Enters.*, 47 F.3d at 378; *accord NVIDIA Corp.*, 2008 WL 5382544, at *3.²³

16 *Third*, during the course of this litigation, the Parties raised several legal and factual issues
 17 that have little precedent in the case law. Given the procedural hurdles associated with
 18 prosecuting a derivative action and the substantive challenges in asserting a *Caremark* claim,
 19 Co-Lead Plaintiffs could not rely on a well-established body of summary judgment decisions,
 20 calculations of damages, and procedural questions post-pleadings. Moreover, counsel is aware of
 21 no instance of a *Caremark* claim being tried before a finder of fact. Therefore, the Parties faced
 22 uncertainty as to how legal and factual issues would be ultimately resolved, and resolution of any
 23 one issue might alter the Parties' valuation of claims. Furthermore, the potential for appeal on
 24
 25

26 ²² See *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959 (Del. Ch. 1996).

27 ²³ See also *Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983) ("Settlements of
 shareholder derivative actions are particularly favored because such litigation is 'notoriously
 difficult and unpredictable.''" (quoting *Schimmel v. Goldman*, 57 F.R.D. 481, 487 (S.D.N.Y.
 1973))).

1 any one of these issues injected further uncertainty into the equation. In light of these
 2 considerations, Co-Lead Plaintiffs faced considerable risk in continuing to litigate the case.

3 *Fourth*, recovery of damages in this litigation was further complicated by the complexities
 4 of a director and officer liability insurance policy covering the alleged misconduct. A settlement
 5 provides Wells Fargo the benefit of immediacy, allowing the Company to benefit from a cash
 6 payment without having to await additional appeals or potential litigation between Defendants
 7 and their insurers. *See In re Galena Biopharma, Inc. Deriv. Litig.*, No. 3:14-CV-00382-SI, 2016
 8 WL 10840600, at *2 (D. Or. June 24, 2016) (noting that an insurance coverage lawsuit “would
 9 also further deplete the financial resources of Galena”).

10 **F. Co-Lead Plaintiffs’ and Co-Lead Counsel’s Endorsement of the Settlement**

11 In addition, the collective experience of Co-Lead Plaintiffs and their counsel is further
 12 reason to conclude that the Settlement resulted from well-informed deliberations. Co-Lead
 13 Plaintiffs are sophisticated institutional investors, each publicly regulated and accountable
 14 through a board of directors, and each with significant derivative litigation experience of its
 15 own.²⁴ Counsel for Co-Lead Plaintiffs are among the nation’s leading securities class action and
 16 derivative litigation firms, with extensive experience in litigating complex actions. *See* Dkt. 34-3,
 17 34-4; *see also* Dkt. 70 (noting Co-Lead Counsel’s “significant experience obtaining favorable
 18 results as lead counsel in shareholder derivative litigation”).²⁵ Together, the collective experience
 19 and judgment of Co-Lead Counsel supports approval of the Settlement.

20 ²⁴ *See, e.g., In re the Hospitalist Co., Inc. Consolidated Derivative Litig.*, C.A. No. 10258-CB
 21 (Del. Ch. filed Oct. 20, 2014) (The City of Birmingham Retirement and Relief System appointed
 22 as co-lead plaintiff); *In re Duke Energy Corp. Coal Ash Derivative Litig.*, C.A. No. 9682-VCG
 23 (Del. Ch. filed May 22, 2014) (same); *In re UnitedHealth Grp. Inc. S’holder Derivative Litig.*, No.
 24 0:06-cv-01216-JMR-FLN (D. Minn. filed Mar. 29, 2006) (Fire & Police Pension Association of
 25 Colorado appointed as co-lead plaintiff).

25 *See also In re Volkswagen “Clean Diesel” Mkt’g, Sales Practices & Prods. Liability Litig.*, No.
 26 3:15-md-02672-CRB (N.D. Cal.) (Lieff Cabraser, as lead counsel, obtained a series of class
 27 action settlements totaling over \$11 billion); *In re Broadcom Corp. Derivative Litig.*, No. C-06-
 28 3252 R (CWx) (C.D. Cal.) (in a shareholder derivative action and the largest stock options
 backdating case in the country, Lieff Cabraser achieved settlements totaling \$197 million); *In re
 Wilmington Tr. Sec. Litig.*, Master File No. 10-cv-00990-ER (D. Del.) (Saxena White as co-lead
 counsel achieved \$210 million settlement representing a recovery of nearly 40% of maximum
 recoverable damages, ranking among the top-ten securities fraud settlements in the Third Circuit);
In re Bank of America Corp. Sec., Derivative & ERISA Litig., No. 09-md-2058 (S.D.N.Y.)
 (Saxena White recovered \$62.5 million for the company and its shareholders, along with
 fundamental, board-level corporate governance reforms).

1 At bottom, this Settlement enables Wells Fargo to recover substantial monetary and non-
 2 monetary benefits without incurring any additional risks or costs.²⁶

3 **VI. THE NOTICE PLAN PROVIDES MORE THAN ADEQUATE NOTICE**

4 Co-Lead Plaintiffs propose a publication-only notice plan consistent with shareholder
 5 derivative settlement notice procedure and precedent, *see, e.g., Hewlett-Packard*, 716 F. App'x at
 6 608, which includes the following: (1) publication, by Wells Fargo, of a Summary Notice, *see*
 7 Settlement, Ex. E, as a quarter-page advertisement in the national and local editions of the *Wall*
 8 *Street Journal*, the *New York Times*, the *Los Angeles Times*, and *Investor's Business Daily*;
 9 (2) publication, by Co-Lead Counsel, of the Summary Notice via a national wire service;
 10 (3) publication, by Wells Fargo, of a Current Report on its Form 8-K with the Securities and
 11 Exchange Commission; (4) electronic publication, by Wells Fargo, of the Settlement and a Notice,
 12 *see* Settlement, Ex. D, via a link on the "Investor Relations" page of the Wells Fargo website,²⁷
 13 the address of which shall be contained in the Notice and the Summary Notice, and which shall
 14 be sent by U.S. Mail to persons who request the Notice; and (5) electronic publication, by Co-
 15 Lead Counsel, of the Settlement and the Notice at a website created specifically for the purpose of
 16 disseminating notice. Settlement ¶ 35.

17 Co-Lead Plaintiffs seek Court approval of the form of the Notice and Summary Notice.
 18 *See* Settlement, Exs. D (Notice) & E (Summary Notice). The Notice and Summary Notice are
 19 written in accordance with the Ninth Circuit's requirement that a notice to shareholders "describe[]
 20 the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate
 21 and to come forward and be heard." *Hewlett-Packard*, 716 F. App'x at 608. Specifically, the
 22 Notice and Summary Notice each include a summary of the litigation; the reasons for settlement;

23 ²⁶ The Settlement provides a broad release of all claims arising from facts alleged in this action
 24 or any of several related state court actions. *See* Section III, *supra*. As the Ninth Circuit has held,
 25 "[a] settlement agreement may preclude a party from bringing a related claim in the future even
 26 though the claim was not presented and might not have been presentable in the class action, but
 27 only where the released claim is based on the identical factual predicate as that underlying the
 28 claims in the settled class action." *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010)
 (citations and internal quotation marks omitted); *see also Class Plaintiffs v. City of Seattle*, 955
 F.2d 1268, 1287 (9th Cir. 1992); *Chavez v. PVH Corp.*, No. 13-CV-01797-LHK, 2015 WL
 9258144, at *4 (N.D. Cal. Dec. 18, 2015); *Angell v. City of Oakland*, No. 13-CV-00190 NC, 2015
 WL 65501, at *7 (N.D. Cal. Jan. 5, 2015).

27 ²⁷ See Wells Fargo, Investor Relations, <https://www.wellsfargo.com/about/investor-relations/>.

1 the terms of the Settlement, including an overview of the Corporate Governance Reforms and
 2 Clawbacks; the effect of court approval of the Settlement on shareholders' rights; the anticipated
 3 attorney's fee request; and an explanation of a shareholder's right to object, the deadline to object,
 4 and the right to appear at the Final Approval Hearing. *Id.* Indeed, the proposed notice plan
 5 contemplates broader dissemination than plans that have been approved in other derivative
 6 settlements. *See, e.g., id.* at 608 (affirming approval of notice plan providing for publication of
 7 notice (i) in leading papers for two days, (ii) in a Form 8-K, and (iii) on the company's website);
 8 *In re Atmel Corp. Deriv. Litig.*, No. 06-cv-04592-JF, 2010 WL 9525643, at *5 (N.D. Cal. Mar. 31,
 9 2010) (requiring publication of notice though (i) a press release, (ii) a link on the company's
 10 website, and (iii) in *Investor's Business Daily*); *In re Rambus Inc. Derivative Litig.*, No. 06-cv-
 11 03513-JF, 2009 WL 166689, at *2 (N.D. Cal. Jan. 20, 2009) (noting that court preliminarily
 12 approved notice through (i) press release on Business Wire, (ii) a Form 8-K, and (iii) on the
 13 company's website).

14 Accordingly, the form and manner of the proposed notice constitute the best notice
 15 practicable under the circumstances and satisfies the requirements of Rule 23.1 and due process.

16 **VII. ATTORNEY'S FEES, COSTS, AND REPRESENTATIVE REIMBURSEMENT**

17 **A. Attorney's Fees and Costs**

18 After negotiating the principal terms of the Settlement, Co-Lead Counsel and counsel for
 19 Wells Fargo, with the assistance of the mediators, separately negotiated the amount of attorney's
 20 fees and expenses that the Company would pay to Co-Lead Counsel, in light of the benefits
 21 conferred by Co-Lead Plaintiffs' efforts. Weinstein Decl. ¶ 18. In accordance with the
 22 Settlement, Co-Lead Plaintiffs anticipate requesting an award of up to \$68 million in attorney's
 23 fees, to be paid by the Company. *See* Settlement ¶ 44. Wells Fargo fully supports Co-Lead
 24 Counsel's request for an award of attorney's fees of up to \$68 million and Co-Lead Plaintiffs'
 25 Reimbursement Award request. Co-Lead Counsel will not separately seek reimbursement of their
 26 own costs or expenses incurred in connection with this litigation.

27 The \$68-million amount represents 21.25 percent of the \$320 million total value of the
 28 Settlement, which falls well under the 25-percent benchmark rate for attorney's fee awards in the

1 Ninth Circuit. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Six (6)*
 2 *Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *accord Hefler*,
 3 2018 WL 4207245, at *8. Moreover, Co-Lead Counsel²⁸ have dedicated more than 47,000 hours
 4 of attorney and other professional staff time to bring this action to a successful conclusion,
 5 without having yet received compensation for these efforts. Joint Decl. ¶ 21. Co-Lead Plaintiffs
 6 and Wells Fargo have agreed and acknowledge that the facts alleged in this action were
 7 significant factors taken into account by Wells Fargo in implementing the Corporate Governance
 8 Reforms and the Clawbacks. In view of an estimated lodestar in excess of \$20,490,000,²⁹ a \$68-
 9 million fee award would result in a multiplier of at most 3.32. Accordingly, a lodestar cross-
 10 check would support the reasonableness of such a fee request. *See, e.g., Vizcaino*, 290 F.3d
 11 1052–54 (concluding that multipliers most commonly fall range from 1.0 to 4.0); *accord Hefler v.*
 12 *Wells Fargo & Co.*, No. 3:16-cv-05479-JST, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018)
 13 (“Plaintiffs’ Counsel’s total lodestar of \$29,504,271.25 results in a multiplier of 3.22
 14 Because Plaintiffs’ Counsel’s lodestar multiplier is within the range of reasonableness, it supports
 15 the requested award”).

16 **B. Representative Reimbursement**

17 Concurrently, Co-Lead Plaintiffs also intend to seek an award for reimbursement for their
 18 time and expenses in representing Wells Fargo in an amount up to an aggregate of \$50,000,
 19 which amount will be paid from Co-Lead Counsel’s fee award. Such an award would recognize
 20 the resources that Co-Lead Plaintiffs devoted to zealously litigating this case on behalf of the
 21 Company and its shareholders, and would “reward the public service performed by lead plaintiffs
 22 in contributing to the vitality and enforcement of securities laws.” *In re Cendant Corp.*,
 23 *Derivative Action Litig.*, 232 F. Supp. 2d 327, 344 (D.N.J. 2002); *see also Rodriguez v. W. Publ’g*
 24 *Co.*, 563 F.3d 948, 958–59 (9th Cir. 2009) (“[Incentive awards] are intended to . . . to make up for

25 ²⁸ During the course of this litigation, Co-Lead Counsel were assisted by the following law firms
 26 under limited circumstances: Glancy Prongay & Murray LLP; Robbins Arroyo LLP; and Prickett,
 27 Jones & Elliott, P.A.

28 ²⁹ This figure represents counsel’s best estimate to date, and will be subject to additional work
 29 performed in this case and a further audit of time records prior to a formal request for an award of
 attorney’s fees.

1 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
 2 willingness to act as a private attorney general.”).

3 The amount to be requested is fully supported by the substantial time and effort spent
 4 during the course of this litigation. Co-Lead Plaintiffs represented the best interests of the
 5 Company and actively pursued this litigation by, among other things, reviewing filings, attending
 6 hearings, personally attending every mediation session, participating in settlement-related
 7 presentations, reviewing the Settlement terms, and approving the Settlement. Joint Decl. ¶ 23.

8 *See Thomas v. MagnaChip Semiconductor Corp.*, No. 14-CV-01160-JST, 2018 WL 2234598, at
 9 *4 (N.D. Cal. May 15, 2018) (among other things, “communicat[ing] with counsel about the
 10 Action and help[ing] evaluate settlement proposals” found by the Court to “warrant incentive
 11 awards”). Their efforts resulted in the largest derivative settlement in history.

12 **VIII. PROPOSED SCHEDULE FOR DISSEMINATION OF NOTICE AND SCHEDULE**
 13 **OF FINAL APPROVAL HEARING**

14 In connection with preliminary approval of the Settlement, Co-Lead Plaintiffs request that
 15 the Court set deadlines by which notice of the Settlement will be disseminated to Wells Fargo
 16 shareholders, Wells Fargo shareholders may object to or comment on the Settlement, and a Final
 17 Approval Hearing. As set forth in the Proposed Order Preliminarily Approving Derivative
 18 Settlement and Providing for Notice, *see Settlement, Ex. C*, Co-Lead Plaintiffs propose the
 19 following:

Event	Deadline
<p>20 Publication of Notice and Summary Notice, including:</p> <p>21</p> <ul style="list-style-type: none"> <li data-bbox="323 1495 1041 1628">22 • publication, by Wells Fargo, of the Summary 23 Notice in national and local editions of the <i>Wall Street Journal</i>, the <i>New York Times</i>, the <i>Los Angeles Times</i>, and <i>Investor's Business Daily</i>; <li data-bbox="323 1655 1041 1727">24 • publication, by Co-Lead Counsel, of the Summary 25 Notice via a national wire service; <li data-bbox="323 1755 1041 1854">26 • publication, by Wells Fargo, of a Current Report on 27 its Form 8-K with the Securities and Exchange Commission; <li data-bbox="323 1881 1041 1947">28 • electronic publication, by Wells Fargo, of the Settlement and the Notice its website; and 	27 7 calendar days after Court enters 28 the Preliminary Approval Order

1	Event	Deadline
2	<ul style="list-style-type: none"> • electronic publication, by Co-Lead Counsel, of the Settlement and the Notice at a website created specifically for the purpose of disseminating notice 	
3	Last day to file Motion for Final Approval of Settlement, Motion for Attorney's Fees and Reimbursement Awards	35 calendar days before the Final Approval Hearing
4	Last day for Wells Fargo shareholders to object to or otherwise comment on the Settlement or the Motion for Attorney's Fees and Reimbursement Awards	21 calendar days before the Final Approval Hearing
5	Last day to file papers in response to any objection to or comment on the Settlement or the Motion for Attorney's Fees and Reimbursement Awards	7 calendar days before the Final Approval Hearing
6	Final Approval Hearing	At least 65 days after entry of an order preliminarily approving the Settlement
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8		
9		
10		

11 This schedule is similar to those used in connection with other derivative settlements³⁰ and
 12 provides due process to Wells Fargo shareholders with respect to the Settlement.

13 **IX. CONCLUSION**

14 For all the foregoing reasons, Co-Lead Plaintiffs respectfully request that this Court grant
 15 preliminary approval of the Settlement, approve and direct the implementation of the notice plan,
 16 and schedule a Final Approval Hearing.

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³⁰ See, e.g., *NVIDIA Corp.*, 2008 WL 5382544, at *4 (settlement hearing 36 days after approval, notice provided within 10 business days of preliminary approval).

1 Dated: February 28, 2019

LIEFF CABRASER HEIMANN & BERNSTEIN

2 By: /s/ Richard M. Heimann

3 Richard M. Heimann (063607)

4 *rheimann@lchb.com*

5 Katherine C. Lubin (259826)

6 *kbenson@lchb.com*

7 Michael K. Sheen (288284)

8 *msheen@lchb.com*

9 LIEFF CABRASER HEIMANN & BERNSTEIN,
10 LLP

11 275 Battery Street, 29th Floor

12 San Francisco, CA 94111-3339

13 Telephone: (415) 956-1000

14 Facsimile: (415) 956-1008

15 Steven E. Fineman (140335)

16 *sfineman@lchb.com*

17 Daniel P. Chiplock (*Pro hac vice*)

18 *dchiplock@lchb.com*

19 Nicholas Diamand (*Pro hac vice*)

20 *ndiamand@lchb.com*

21 Michael J. Miarmi (*Pro hac vice*)

22 *mmiarmi@lchb.com*

23 Sean A. Petterson (*Pro hac vice*)

24 *spetterson@lchb.com*

25 LIEFF CABRASER HEIMANN & BERNSTEIN,
26 LLP

27 250 Hudson Street, 8th Floor

28 New York, NY 10013-1413

Telephone: (212) 355-9500

Facsimile: (212) 355-9592

29 *Attorneys for Co-Lead Plaintiff Fire & Police
30 Pension Association of Colorado and Co-Lead
31 Counsel*

1 Maya Saxena (*Pro hac vice*)
2 *msaxena@saxenawhite.com*
3 Joseph E. White, III (*Pro hac vice*)
4 *jwhite@saxenawhite.com*
5 Lester R. Hooker (241590)
6 *lhooker@saxenawhite.com*
7 Adam D. Warden (*Pro hac vice*)
8 *awarden@saxenawhite.com*
9 Dianne M. Anderson (286199)
10 *danderson@saxenawhite.com*
11 SAXENA WHITE P.A.
12 150 East Palmetto Park Road, Suite 600
13 Boca Raton, FL 33432
14 Telephone: (561) 394-3399
15 Facsimile: (561) 394-3382

16 Steven B. Singer (*Pro hac vice*)
17 *ssinger@saxenawhite.com*
18 Kyla Grant (*Pro hac vice*)
19 *kgrant@saxenawhite.com*
20 Sara DiLeo (*Pro hac vice*)
21 *sdileo@saxenawhite.com*
22 SAXENA WHITE P.A.
23 10 Bank Street, 8th Floor
24 White Plains, NY 10606
25 Telephone: (914) 437-8551
26 Facsimile: (888) 631-3611

27 *Attorneys for Co-Lead Plaintiff The City of*
28 *Birmingham and Co-Lead Counsel*